STATE OF MICHIGAN

COURT OF APPEALS

NIKICA LULGJURAJ,

Plaintiff-Appellant,

v

EMERALD LANDSCAPING & DESIGN, INC., and MICHAEL VANOVEBECK,

Defendants,

and

FORD MOTOR COMPANY,

Defendant-Appellee.

UNPUBLISHED
September 7, 1999

No. 209349
Macomb Circuit Court
LC No. 97-001615 NP

Before: Bandstra, C.J., and Whitbeck and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right an order dismissing defendants Emerald Landscaping & Design, Inc. and Michael Vanovebeck. The issues on appeal relate to a prior order granting defendant Ford Motor Company's[1] motion to quash improper and untimely service and to dismiss plaintiff's complaint. Dismissal of plaintiff's complaint was with prejudice, the statute of limitations having expired. We affirm.

Plaintiff claims that the trial court erred in granting defendant's motion to quash service of process because, pursuant to MCR 2.102(D), the trial court had previously properly granted an extension of the original summons and imposed conditions on the extension. We disagree with this analysis.

MCR 2.102(D) governs the expiration of a summons and states, in pertinent part:

> A summons expires 91 days after the date the complaint is filed. However, within that 91 days, on a showing of good cause, the judge to whom the action is assigned may

> order a second summons to issue for a definite period not exceeding 1 year from the date the complaint is filed.

The interpretation and application of a court rule presents a question of law that is reviewed de novo on appeal. *McAuley v Gen'l Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998). Language contained in a court rule should be accorded its ordinary and generally accepted meaning. *Id.*

In the present case, the summons was reissued and an extension of time for service of process was granted twice by the trial court. However, these orders were in error because the "good cause" standard for granting a second summons under MCR 2.102(D) was not met by plaintiff. This Court, in *Bush v Beemer*, 224 Mich App 457, 464; 569 NW2d 636 (1997), [2] held that the "good cause" standard requires that plaintiff show due diligence, which was described as:

> [D]ue diligence under MCR 2.102(D) means diligent efforts in trying to serve process, not diligence in matters logically preceding the decision to serve process. Therefore, we reject plaintiff's claim that diligent efforts to determine whether a case has merit constitutes good cause for delayed service. [Emphasis deleted.]

In this case, plaintiff's asserted "good cause" was that he was still investigating whether defendant was responsible for his injuries. We conclude that the trial court erred in granting plaintiff's petitions for extensions.

Plaintiff also argues that defendant was barred from raising the defense of improper service because it filed an appearance before filing its motion to dismiss. Again, we disagree with this analysis.

MCR 2.102(E)(1) provides, in pertinent part:

> On the expiration of the summons as provided in subrule (D), the action is deemed dismissed without prejudice as to a defendant who has not been served with process as provided in these rules, unless the defendant has submitted to the court's jurisdiction.

Plaintiff argues that defendant submitted to the trial court's jurisdiction by filing an appearance and, thus, could not later contest the propriety of the service of process through the filing of a motion to quash. However, filing an appearance without taking any other action toward defense of an action does not confer jurisdiction over a defendant. MCR 2.117(A)(2); see, also, *Penny v ABA Pharmaceutical Co (On Remand)*, 203 Mich App 178, 181; 511 NW2d 896 (1993). Although defendant entered an appearance, defendant did not contest the cause of action on the merits and cannot be deemed to have submitted to the court's jurisdiction. *Penny, supra*.

Although plaintiff argues that he should not be penalized for relying on the orders of the trial court granting extensions of the summons, we do not think that this is substantially unfair under the circumstances of this case. As noted earlier, *Bush* had been decided before the second extension was granted and plaintiff was, therefore, on notice that his continuing investigation into whether defendant was responsible for his injuries did not constitute "good cause" for an extension. Further, at the time the second extension was requested on the basis of this insufficient reason, the statute of limitations had

expired. In other words, the statute having expired, plaintiff affirmatively stated to the trial court that he had not determined whether defendant was responsible for his injuries. Finally, plaintiff does not suggest that he alerted the trial court to the fact that the statute of limitations was at issue here and thus afforded the trial court no opportunity to carefully consider the impact of the decisions to extend the summons.

We affirm.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Michael J. Talbot

[1] Ford Motor Company will be referred to as "defendant" because plaintiff's claim on appeal relates only to his claims against Ford.

[2] *Bush* was decided July 11, 1997, after the first extension was granted but before the second extension was granted.